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Security Council Committee established pursuant to resolution 1267 (1999)

Note verbale dated 17 June 2002 from the Permanent Mission of Austria to the United Nations addressed to the Chairman of the Committee

The Permanent Mission of Austria to the United Nations presents its compliments to the Chairman of the Committee established pursuant to resolution 1267 (1999) and has the honour to transmit the Austrian Report to the Committee established pursuant to resolution 1267 (1999) on the implementation of paragraph 6 of resolution 1390 (2002) of 16 January 2002 (see annex).

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Annex to the note verbale from the Permanent Mission of Austria to the United Nations addressed to the Chairman of the Committee

REPORT BY AUSTRIA TO THE COMMITTEE ESTABLISHED PURSUANT TO RESOLUTION 1267 (1999) ON THE IMPLEMENTATION OF PARAGRAPH 6 OF SECURITY COUNCIL RESOLUTION 1390 (2002) OF JANUARY 2002

United Nations Security Council Resolution 1390 (2002) requests all States to report to the Sanction Committee within 90 days from the date of adoption of this resolution on the steps they have taken to implement the measures required.

Since many provisions of this resolution have to be implemented by EU legislation, Austria, a member State of the European Union, decided to wait with the submission of her report until this EU legislation is in place. (The relevant EU legislation is attached as Annex to this report)

The present report is set out according to the outline of paragraph 2 of UNSCR 1390 (2002).

2 (a) Measures taken for freezing of funds and other financial assets or economic resources of these individuals, groups, undertakings and entities, including funds derived from property owned or controlled, directly or indirectly, by them or by persons acting on their behalf or at their direction, and ensuring that neither these or any other funds, financial assets or economic resources are made available, directly or indirectly for such persons' benefit, by their nationals or by any persons within their territory

To implement UNSCR 1390 (2002), the European Union adopted Council Regulation (EC) No 881/2002 on 27 May 2002 imposing certain specific restrictive measures directed against certain persons and entities associated with Usama bin Laden, the Al-Qaida network and the Taliban, and repealing Council Regulation (EC) No 467/2001 prohibiting the export of certain goods and services to Afghanistan, strengthening the flight ban and extending the freeze of funds and other financial resources in respect of the Taliban of Afghanistan (see Annex A). This regulation provides for the freezing of all funds and economic resources belonging to, or owned or held by, a natural or legal person, group or entity designated by the Sanctions Committee and listed in the Annex to the regulation. This annex will be amended based on decisions made by either the UNSC or its Sanctions Committee.

All EC Regulations are directly applicable and binding in Austria.

Several suspicious transactions have been checked in order to ensure that no connection with terrorists referred to in the abovementioned list exists. Up to now, no such connection, has been identified.

2 (b) Measures taken to prevent the entry into or the transit through their territories of these individuals, provided that noth..ig in this paragraph shall oblige any State to deny entry into or require the departure from its territories of its own nationals and this paragraph shall not apply where entry or transit is necessary for the fulfilment of a judicial process or the Committee determines on a case by case basis only that entry or transit is justified

* The enclosure referred to in the report is on file with the Secretariat, room S-3055, and is available for consultation

Concerning the prevention of entry or the transit through territories of individuals who fall under the scope of UNSCR 1390 (2002), the Austrian Aliens Act as well as other relevant national legislations already fulfil these requirements. In this respect, as one among many responses to the terrorist attacks of 11 September 2001, the Austrian Federal Ministry of the Interior gave instructions for compulsory consultation of the Ministry in case of visa and residence permit applications from 21 countries.

For nationals of these countries and for persons holding travel documents issued by these countries (stateless persons, refugees, others),

- all visas – airport transit visa A, transit visa B, visa C, residence visa D, and geographically restricted visa (VrG) – and
- all permits (permission to settle and residence permit), independent of the fact whether it is a first application or an application for renewal,

may only be granted after approval by the Federal Ministry of the Interior.

Nationals of these countries and persons holding travel documents issued by these countries are to be checked more intensively when crossing the border. Passports and Schengen-visa have to be crosschecked in the national information system as well as in the Schengen Information System (SIS), even if these persons as family members of nationals of other Schengen States are normally exempt from checks. In these cases, border visa may only be granted after approval by the Federal Ministry of Interior.

The persons mentioned in the Council decision of 2 May 2002 are included in the national information system and in the SIS, as far as there are complete personal data provided. Otherwise only the Austrian missions abroad (embassies and consulates general) are informed. The incomplete data are not available for Austrian authorities because technically they cannot be included in the information systems.

Provisions for excluding or expelling such persons are laid down in the Austrian Aliens Act.

2 (c) Measures taken to prevent the direct or indirect supply, sale and transfer, to these individuals, groups, undertakings and entities from their territories or by their nationals outside their territories, or using their flag vessels or aircraft, of arms and related material of all types including weapons and ammunition, military vehicles and equipment, paramilitary equipment, and spare parts of the aforementioned and technical advice, assistance, or training related to military activities

According to article 3 of EU Council Regulation (EC) No 881/2002 (see Annex A) it is prohibited to grant, sell, supply or transfer, directly or indirectly, technical advice, assistance or training related to military activities, including in particular training and assistance related to the manufacture, maintenance and use of arms and related material of all types to any natural or legal person, group or entity designated by the Sanctions Committee listed in the Annex.

As stated under 2 (a), all EC Regulations are directly applicable and binding in Austria.

In addition to the EU legislation, domestic legislation applies. Under the Austrian Foreign Trade Act, the export of weapons is subject to export control. Concerning foreign trade with war material and procurement of war material, the War Material Act provides strict procedures with regard to granting permission. Furthermore, when issuing licences for exports of weapons to third countries, Austria applies the common standards of the EU Code of Conduct on arms exports. According to criterion 7 of the EU Code of Conduct licences will be refused, if there is the risk that the arms to be exported could be diverted to terrorist organizations.
As a consequence and in accordance with UNSCR 1390 (2002), no permission is granted to any of the individuals, groups, undertakings and entities referred to in the list created pursuant to resolution 1267 (1999), 1333 (2000) and 1390 (2002).

From the penal law side, the import, export or transfer of war material through Austrian territory constitutes a criminal offence, if necessary permissions have not been obtained or regulations prohibiting the export to certain countries have been violated. Even negligence would make the act punishable.